

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2357 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PRAVEENKUMA JOSEF DISILVA

Versus

GUJARILAL DIPCHAND SHARMA

Appearance:

MR PN BAVISHI for Petitioners

MR YU MALIK for Respondent No. 1

MR SP DAVE, APP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/08/1999

ORAL JUDGEMENT

1. Heard Mr. Bavishi, learned advocate for the petitioners, Mr. Y.U. Malik, learned advocate for respondent No.1 and Mr. S.P. Dave, learned Additional Public Prosecutor for respondent No.2.

2. Rule. Mr. Malik waives service of Rule on

behalf of respondent No.1 and Mr. Dave service on behalf of respondent No.2. Keeping in mind the special circumstances and at the request of learned advocates for the parties, the matter is taken up today final hearing.

3. Petitioners are the accused persons in respect of a complaint lodged by respondent No.2 for offences punishable under Sections 406 and 114 of Indian Penal Code. The complaint came to be lodged before the learned Judicial Magistrate, First Class, Valiya, alleging that that petitioners No.1 and 2 were the driver and owner, respectively, of truck No.KA 19 7183, which was loaded with goods to be sent to a particular destination. The truck met with an accident and, therefore, the goods loaded in the truck were not delivered at the destination and this is how they have committed criminal breach of trust. On basis of that complaint, an F.I.R. came to be registered M.Case No.3 of 1999 by Valiya Police Station. This is the subject matter of challenge in this petition.

4. The case of the petitioners is that petitioner No.1 is the driver and petitioner No.2 is the owner of the truck and are plying the truck for hire. The truck had come to Gujarat and was loaded with float glasses to be taken from Ankleshwar to Mangalore. Unfortunately, the truck met with an accident on the way and while truck was lying at the spot and the driver had gone for lodging F.I.R. and taking necessary steps for securing insurance, etc., the goods which were lying at the spot came to be stolen. Contemporaneous record is available to show that the truck met with an accident and an F.I.R. was lodged. Therefore, there is lack of mens rea and, therefore, the petition may be allowed.

5. Mr. Bavishi has argued what is advanced in the petition. He also submitted that following the theft, the petitioners made inquiries only to learn that the local Police Inspector was himself a party to the theft of the float glasses loaded in the truck which he has sold away. A complaint in this regard has been made to Superintendent of Police and on basis of that complaint to Superintendent of Police, investigation is made, F.I.R. is registered and charge sheet is being awaited and, therefore, Mr. Bavishi submitted that the petition may be allowed.

6. Mr. Malik has strongly opposed this petition. He submitted that the complainant's right is badly affected. He is incurred a loss of Rs.2 lakhs in this regard.

7. Considering rival side contentions, it is amply clear that the truck was loaded at Ankleshwar for goods being carried to Mangalore and the truck met with an accident. It is also not controverted by the other side that an F.I.R. is lodge for the accident. It is also clear that the petitioners have lodged a complaint against the concerned Police Inspector for the theft of the goods loaded in the truck which was lying at the spot of the accident and steps are being taken by the Superintendent of Police concerned for the purpose. In this view of the matter, it cannot be said that there was any mens rea. There is no question of any criminal breach of trust. It is the accident that is responsible for non-delivery of the goods and the complaint, therefore, cannot be permitted to be proceeded with any further against the petitioners. In this view of the matter, the petition is allowed. The complaint before learned Judicial Magistrate, First Class, Valiya, sent to Police for investigation and registered as M. Case No.3 of 1999 is hereby quashed. Rule is made absolute accordingly. Direct service permitted.

[A.L. DAVE, J.]

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